

ASSEMBLY BILL

No. 898

Introduced by Assembly Member Leach

February 23, 2001

An act to amend Section 17942 of, and to repeal and add Section 17943 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 898, as introduced, Leach. Income taxes: LLCs: fee adjustment.

The Personal Income Tax Law provides that a limited liability company doing business in this state shall pay annually a specified tax for the privilege of doing business in this state. In addition, that law requires that any limited liability company subject to that tax shall pay a fee, based upon total income from all sources reportable to this state, which is subject to adjustment pursuant to a study and determination by the Franchise Tax Board.

This bill would increase these fees, as specified, and would delete those provisions relating to the adjustment of that fee, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17942 of the Revenue and Taxation
- 2 Code is amended to read:

1 17942. (a) In addition to the tax imposed under Section
2 17941, every limited liability company subject to tax under
3 Section 17941 shall pay annually to this state a fee equal to:

4 (1) ~~Five hundred dollars (\$500)~~ *Nine hundred dollars (\$900)*,
5 if the total income from all sources reportable to this state for the
6 taxable year is two hundred fifty thousand dollars (\$250,000) or
7 more, but less than five hundred thousand dollars (\$500,000).

8 (2) ~~One thousand five hundred dollars (\$1,500)~~ *Two thousand*
9 *five hundred dollars (\$2,500)*, if the total income from all sources
10 reportable to this state for the taxable year is five hundred thousand
11 dollars (\$500,000) or more, but less than one million dollars
12 (\$1,000,000).

13 (3) ~~Three thousand dollars (\$3,000)~~ *Six thousand dollars*
14 *(\$6,000)*, if the total income from all sources reportable to this
15 state for the taxable year is one million dollars (\$1,000,000) or
16 more, but less than five million dollars (\$5,000,000).

17 (4) ~~Four thousand five hundred dollars (\$4,500)~~ *Nine thousand*
18 *dollars (\$9,000)*, if the total income from all sources reportable to
19 this state for the taxable year is five million dollars (\$5,000,000)
20 or more.

21 (5) (A) This subdivision shall apply to taxable years beginning
22 on or after January 1, 1997.

23 (6) *The changes made to this subdivision by the act adding this*
24 *paragraph shall apply to taxable years beginning on or after*
25 *January 1, 2001.*

26 (b) (1) For purposes of this section, “total income” means
27 gross income, as defined in Section 24271, plus the cost of goods
28 sold that are paid or incurred in connection with the trade or
29 business of the taxpayer. *However, “total income” shall not*
30 *include allocation or attribution of income or gain or distributions*
31 *made to a limited liability company in its capacity as a member of,*
32 *or holder of an economic interest in, another limited liability*
33 *company if the allocation or attribution of income or gain or*
34 *distributions are directly or indirectly attributable to income that*
35 *is subject to the payment of the fee described in this section.*

36 (2) In the event a taxpayer is a commonly controlled limited
37 liability company, the total income from all sources reportable to
38 this state, taking into account any election under Section 25110,
39 may be determined by the Franchise Tax Board to be the total
40 income of all the commonly controlled limited liability company



1 members if it determines that multiple limited liability companies
2 were formed for the primary purpose of reducing fees payable
3 under this section. A determination by the Franchise Tax Board
4 under this subdivision may only be made with respect to one
5 limited liability company in a commonly controlled group.
6 However, each commonly controlled limited liability company
7 shall be jointly and severally liable for the fee. For purposes of this
8 section, commonly controlled limited liability companies shall
9 include the taxpayer and any other partnership or limited liability
10 company doing business (as defined in Section 23101) in this state
11 and required to file a return under Section 18633 or 18633.5, in
12 which the same persons own, directly or indirectly, more than 50
13 percent of the capital interests or profits interests.

14 (c) The fee assessed under this section shall be due and payable
15 on the date the return of the limited liability company is required
16 to be filed under Section 18633.5, shall be collected and refunded
17 in the same manner as the taxes imposed by this part, and shall be
18 subject to interest and applicable penalties.

19 SEC. 2. Section 17943 of the Revenue and Taxation Code is
20 repealed.

21 ~~17943. (a) On or before January 1, 1999, and annually~~
22 ~~thereafter, the Franchise Tax Board shall conduct a study using the~~
23 ~~methodology and assumptions set forth in the report dated August~~
24 ~~9, 1994, and titled "Methodology for the Limited Liability~~
25 ~~Company Fee Adjustment Calculation," which is hereby~~
26 ~~incorporated by reference into this section. The study shall be~~
27 ~~submitted to the Joint Legislative Budget Committee and made~~
28 ~~available, upon request, to any Member of the Legislature. If the~~
29 ~~Franchise Tax Board determines, in accordance with the~~
30 ~~methodology and assumptions set forth in the study referenced in~~
31 ~~this subdivision that the application of Chapter 1200 of the Statutes~~
32 ~~of 1994 results in a net gain or reduction in state income and~~
33 ~~franchise tax revenues, the Franchise Tax Board annually shall,~~
34 ~~after a public hearing, increase or decrease the amounts of the fees~~
35 ~~imposed under Section 17942 in a manner that offsets the~~
36 ~~computed revenue gain or loss. Notwithstanding the above, in no~~
37 ~~case shall the amount of the fees be less than one dollar (\$1).~~

38 ~~(b) Limited liability companies shall provide, upon request,~~
39 ~~any information that the Secretary of State or the Franchise Tax~~



1 ~~Board determines to be necessary to complete the revenue analysis~~
2 ~~pursuant to this section.~~

3 ~~(c) The annual increase or decrease in the amounts of the fees~~
4 ~~as determined by the Franchise Tax Board in accordance with this~~
5 ~~section shall apply to each taxable year beginning on or after~~
6 ~~January 1, 1999.~~

7 ~~(d) The Secretary of State shall provide the Franchise Tax~~
8 ~~Board with an annual listing, in a form and manner agreed upon~~
9 ~~by the Franchise Tax Board and the Secretary of State, of the~~
10 ~~limited liability companies registered with the Secretary of State~~
11 ~~during the previous calendar year, including, but not limited to, the~~
12 ~~following information:~~

13 ~~(1) The name and the mailing address of the limited liability~~
14 ~~company.~~

15 ~~(2) The name of the state or foreign country in which the~~
16 ~~limited liability company has filed articles of organization.~~

17 ~~(3) The intent of the limited liability company to be treated as~~
18 ~~a corporation or as a partnership for tax purposes in this state.~~

19 SEC. 3. Section 17943 is added to the Revenue and Taxation
20 Code, to read:

21 17943. It is the intent of the Legislature that the amount of the
22 annual fee described in Section 17942 shall apply to the taxable
23 year beginning January 1, 2001, and subsequent taxable years,
24 notwithstanding the results of any study prepared by the Franchise
25 Tax Board and submitted to the Joint Legislative Budget
26 Committee pursuant to former Section 17943.

27 SEC. 4. This act provides for a tax levy within the meaning of
28 Article IV of the Constitution and shall go into immediate effect.

